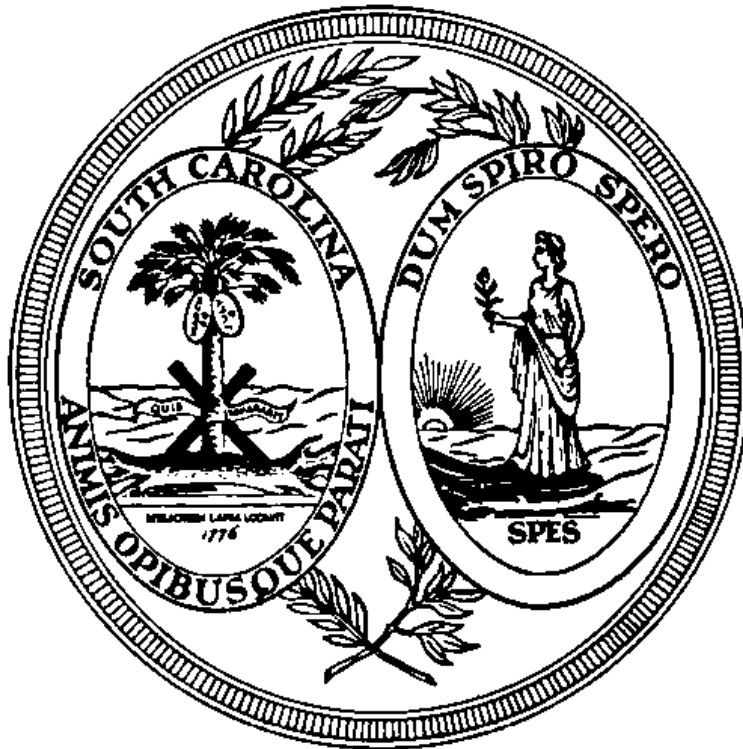


**South Carolina  
Department of Revenue  
Legislative Update  
for 2011**



**The Honorable Nikki R. Haley, Governor  
James F. Etter, Director**

**This publication is written in general terms for widest possible use and may not contain all the specific requirements or provisions of authority. It is intended as a guide only, and the application of its contents to specific situations will depend on the particular circumstances involved. This publication does not constitute tax, legal, or other advice and may not be relied on as a substitute for obtaining professional advice or for researching up to date original sources of authority. Nothing in this publication supersedes, alters or otherwise changes provisions of the South Carolina code, regulations or Department's advisory opinions. This publication does not represent official Department policy. The Department would appreciate any comments or notifications of any errors. Such comments should be sent to:**

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# **TAX LEGISLATIVE UPDATE FOR 2011**

Attached is a brief summary of most of the significant changes in tax and regulatory laws enacted during the past legislative session. The summary is divided into categories, by subject matter, as indicated below.

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**DISCLAIMER:**

This is intended to be a summary of the main points of the legislation; it is not an interpretation by the Department. Please refer to the full text of the legislation for specific details and requirements.

There may be instances where some tax or incentive related legislation briefly summarized is under the jurisdiction of another state agency or political subdivision, and not the Department. In such cases, questions concerning these provisions should be made directly to the agency or political subdivision having primary responsibility for the administration of these acts. Legislation regarding distribution of funds is not summarized.

**TEXT OF LEGISLATION:**

A complete copy of the legislation discussed in this publication can be obtained from the South Carolina Legislative Council's website at <http://www.scstatehouse.net/html-pages/legpage.html>.

## **LIST OF BILLS BY SUBJECT CATEGORY**

A list of significant changes in tax and regulatory laws (both permanent and temporary) enacted during the 2011 legislative session is provided below. Temporary provisos are enacted in the State budget and are only effective for the State fiscal year (July 1 – June 30); unless re-enacted they expire on June 30, 2012.

This list is divided by subject matter with the bills listed in numeric order. The list of bills with a link to the full text of each act is on the Department’s website at:

<http://www.sctax.org/Tax+Policy/Legislation+for+2010.htm>.

### **INCOME TAXES, WITHHOLDING & CORPORATE LICENSE FEES**

<b>BILL #</b>	<b>ACT #</b>	<b>SUBJECT</b>
<a href="#">522</a>	5	Income Tax Conformity
<a href="#">592</a> – Sec. 6	46	Military Corporation – Filing Requirement
3700 – <a href="#">Proviso 1A.16</a>	73	Teacher Supplies – Reimbursement Not Taxable – Reenacted Temporary Proviso
3700 – <a href="#">Proviso 81.8</a>	73	No Estimated Tax Penalty when following IRC 6654(d)(1)(D) – Reenacted Temporary Proviso

### **PROPERTY TAXES and FEES IN LIEU OF PROPERTY TAXES**

<b>BILL #</b>	<b>ACT #</b>	<b>SUBJECT</b>
<a href="#">628</a>		Dorchester County School Districts Millage
3700 – <a href="#">Proviso 1.99</a>	73	DOR Computation of Index of Taxpaying Ability – <b>New Temporary Proviso</b>
3700 – <a href="#">Proviso 89.45</a>	73	Personal Property Tax Relief Fund – Reenacted Temporary Proviso
<a href="#">3713</a> – Sec. 1	57	Alternative Valuation for Assessable Transfer of Interest
– Sec. 2		Cap on Millage Increase Revised
– Sec. 3		Rollback Millage
<a href="#">3806</a>		Property Tax Credit in Lexington County School Districts 1 and 4

### **SALES AND USE TAXES**

<b>BILL #</b>	<b>ACT #</b>	<b>SUBJECT</b>
<a href="#">36</a> – Sec. 1	32	Durable Medical Equipment
– Sec. 2		Warranty & Maintenance Contracts
– Sec. 3		Distribution Facility Nexus
3700 – <a href="#">Proviso 89.44</a>	73	Private Schools – Use Tax Exemption – Reenacted Temporary Proviso
3700 – <a href="#">Proviso 89.67</a>	73	Respiratory Syncytial Virus Medicine – Reenacted Temporary Proviso
3700 – <a href="#">Proviso 89.72</a>	73	Viscosupplementation Therapy – Tax Suspended – Reenacted Temporary Proviso

## MISCELLANEOUS

BILL #	ACT #	SUBCATEGORY	SUBJECT
		<b>Administrative &amp; Procedural</b>	
<a href="#">20</a>	69		Immigration Reform – Suspension or Revocation of licenses
3700 – <a href="#">Proviso 72.17</a>	73		2% Interest Rate Reduction on Refunds for Guardian Ad Litem – Reenacted Temporary Proviso
3700 – <a href="#">Proviso 81.6</a>	73		Political Candidate Tax Return Inquiry – Reenacted Temporary Proviso
3700 – <a href="#">Proviso 89.116</a>	73		1% Interest Rate Reduction on Refunds for Joint Citizens and Legislative Committee on Children and the Department of Juvenile Justice – Reenacted Temporary Proviso
3700 – <a href="#">Proviso 90.21</a>	73		Interpretation of Tax Statutes – Report to General Assembly – <b>New Temporary Proviso</b>
		<b>Miscellaneous Taxes</b>	
<a href="#">584</a>			Lexington County Property Relief – 1¢ Special Sales Tax Extended
3700 – <a href="#">Proviso 1.17</a>	73		Motor Fuel Tax Exemption for School Buses– Reenacted Temporary Proviso
3700 – <a href="#">Proviso 21.16</a>	73		Nursing Home Bed Franchise Fee Suspended – Reenacted Temporary Proviso
3700 – <a href="#">Proviso 81.7</a>	73		Athletic Booster Organizations Season Tickets – Admissions Tax Exemption – Reenacted Temporary Proviso
3700 – <a href="#">Proviso 90.23</a>	73		Motorsports Entertainment Complex Facility – <b>New Temporary Proviso</b>
		<b>Regulatory</b>	
<a href="#">3178</a>	66		Tastings at Liquor Store
<a href="#">3278</a>			Special Permits for Nonprofits
<a href="#">3295</a>	67		ABL Permits

# **INCOME TAXES, WITHHOLDING, and CORPORATE LICENSE FEES**

Senate Bill 522 (Act No. 5)

## **Internal Revenue Code Conformity**

Code Section 12-6-40(A)(1)(a) has been amended, except as otherwise provided, to update South Carolina's income tax laws to conform to the Internal Revenue Code of 1986, as amended through December 31, 2010, and includes the effective date provisions contained therein.

Effective Date: April 12, 2011

Senate Bill 592, Section 6 (Act No. 46)

## **Military Corporation Filing Requirements Clarified**

Code Section 25-1-120, dealing with the incorporation of certain military organizations, has been amended to add subsection (C) to exempt these military organizations from filing returns with the Department to the same extent they are exempt from filing returns with the Internal Revenue Service.

These military organizations may include: (1) enlisted, officer or all-ranks clubs, (2) family support groups, (3) auxiliary organizations, (4) service branch organizations, (5) battalion, brigade, or unit fund organizations, or (6) other such organizations that provide support to personnel and their families. The incorporation of these organizations must be approved by the Adjutant General and the State Judge Advocate. These corporations cannot engage in business and are not required to pay the corporate license fee.

Effective Date: June 7, 2011

## **REMINDER**

**The following provisions were enacted in 2010, but are effective in 2011. They are summarized below for informational purposes.**

House Bill 4478, Section 23 (Act No. 290)

### **Manufacturers of Renewable Energy Systems and Components - New Credit**

Code Section 12-6-3588 has been added to provide an income tax credit to companies in the solar, wind, geothermal, and other renewable energy industries who are expanding or locating in South Carolina. To qualify, a company must: (1) manufacture renewable energy systems and components in South Carolina for solar, wind, geothermal, or other renewable energy uses; (2) invest at least \$500 million in new qualifying plant and equipment in the year the tax credit is claimed; and (3) create one and one-half full time jobs for every \$500,000 of qualifying capital investment that each pays at least 125% of the State's average annual median wage as defined by the Department of Commerce. A taxpayer may separately qualify for new facilities in separate locations or for separate expansions at existing facilities in South Carolina.

Expenditures qualifying for this credit must be certified by the State Energy Office. To obtain the amount of credit available to a taxpayer, each taxpayer must submit a request for the credit to the State Energy Office by January 31<sup>st</sup> for qualifying expenditures incurred in the previous calendar year. By March 1<sup>st</sup>, the State Energy Office must notify the taxpayer of the qualifying expenditures and the allocated credit amount. The credit is claimed for the tax year which contains December 31<sup>st</sup> of the previous calendar year.

The credit is equal to 10% of the cost of the company's total qualifying investment in plant and equipment in South Carolina for renewable energy operations. A taxpayer's total credit for all expenditures allowed must not exceed \$500,000 for any year and \$5 million total for all years. Unused credits can be carried forward 15 years after the tax year in which a qualified expenditure was made. This credit is in lieu of any other applicable income tax credits or abatements allowed by state law. In the event of an overlap or conflict in available credits or abatements, the taxpayer may select the credit or abatement desired in the manner prescribed by the Department.

Note Expiration: "The income tax credit program is for a five-year period beginning January 1, 2010, and ending December 31, 2015."

Effective Date: January 1, 2011



**Capital Investment Tax Credit - Replacing Economic Impact Zone Investment Tax Credit. Repeal of Certain Code Sections in Economic Impact Zone Act in Chapter 14 of Title 12 and Repeal of Credit for Hiring Displaced Workers in Code Section 12-6-3450**

Chapter 14 of Title 12 contains the Economic Impact Zone Community Development Act of 1995. Chapter 14 has been substantially amended. Among the changes are the following:

1. Code Section 12-14-20, containing the purpose of the Economic Impact Zone Community Development Act of 1995, is amended to provide that the purpose of Chapter 14 is to establish a program of providing tax incentives for the creation of capital investment in order to revitalize capital investment in South Carolina, primarily by encouraging the formation of new businesses and the retention and expansion of existing businesses; and to promote meaningful employment. Previously, the Act's purpose was to provide for the establishment of economic impact zones on or in the vicinity of closed or realigned military installations in which various tax incentives may apply to businesses and individuals located in the economic impact zone in order to economically revitalize the area.

2. Code Section 12-14-60, providing for the economic impact zone investment tax credit, has been amended to delete all references to "economic impact zone" and to provide for a capital investment tax credit as follows:

0.5% of total aggregate bases of all qualifying 3 year manufacturing and productive equipment property;

1.0% of total aggregate bases of all qualifying 5 year manufacturing and productive equipment property;

1.5% of total aggregate bases of all qualifying 7 year manufacturing and productive equipment property;

2.0% of total aggregate bases of all qualifying 10 year manufacturing and productive equipment property; and

2.5% of total aggregate bases of all qualifying 15 year or greater manufacturing and productive equipment property.

The definition of qualified manufacturing and productive equipment property in Code Section 12-14-60(B) was amended to replace references to "economic impact zone" with "this State."

3. To repeal the following code sections in Chapter 14 of Title 12:
  - a. Code Section 12-14-30. This section contained definitions of the terms “economic impact zone,” “applicable federal military installation,” “applicable federal facility,” and “internal revenue code.”
  - b. Code Section 12-14-40. This section provided for the designation and revocation of an area as an economic impact zone.
  - c. Code Section 12-14-50. This section provided for an individual income tax deduction for 20% of the purchase price of economic impact zone stock.
  - d. Code Section 12-14-70. This section contained definitions of the terms “economic impact zone business,” “qualified business,” and “nonqualified financial property” relating to the individual income tax deduction.

In a related amendment, Code Section 12-6-3450, providing a tax credit to employers who hire persons who were employed in an economic impact region and whose job was terminated as a result of the closing or realignment of an applicable federal military installation or applicable federal facility, has been repealed.

Effective Date: January 1, 2011, except the repeal of Code Sections 12-14-30, 12-14-40, 12-14-50, 12-14-70, and 12-6-3450 are effective June 23, 2010.

House Bill 4478, Sections 16 and 38 (Act No. 290)

**Job Tax Credit – Amended**

Code Section 12-6-3360, dealing with the job tax credit, has been amended by this Act. Among the changes are the following:

1. The county rankings have been changed from five designations to four designations. Counties will now be ranked as “Tier I,” “Tier II,” “Tier III,” and “Tier IV” counties. “Tier I” counties are the 11 counties with a combination of the lowest unemployment rate and highest per capita income. “Tier IV” counties are the 12 counties with a combination of the highest unemployment rate and lowest per capita income. Previously, counties were ranked as “developed,” “moderately developed,” “underdeveloped,” “least developed,” and “distressed” counties. Code Section 12-6-3360(B).
2. The dollar amount of the basic job tax credit for each new job created based on the new county designations of Tier I, II, III, and IV are:

\$1,500 per year for each new full time job created in a Tier I county,

\$2,750 per year for each new full time job created in a Tier II county,  
\$4,250 per year for each new full time job created in a Tier III county, and  
\$8,000 per year for each new full time job created in a Tier IV county.

Note: The credit is one-half of the dollar amount listed above for a taxpayer with 99 or fewer employees claiming the small business job tax credit under Section 12-6-3360(C)(2) for jobs with gross wages less than 120% of the county's or state's average per capita income.

Previously, the annual basic credit amount for each new, full time job was \$1,500 in a developed county, \$2,500 in a moderately developed county, \$3,500 in an underdeveloped county, \$4,500 in a least developed county, and \$8,000 in a distressed county. Code Section 12-6-3360(C).

3. Several types of businesses qualifying for the credit have been added or changed as follows:
  - a. A taxpayer that operates an "agribusiness operation" can now qualify for the job tax credit. Code Section 12-6-3360(A).
  - b. A taxpayer that operates a retail facility or service-related industry can qualify for the job tax credit only in a Tier IV county. Previously, a retail facility or service related industry in an underdeveloped county not traversed by an interstate highway, least developed county, or distressed county could qualify for the job tax credit. Code Section 12-6-3360(A).
  - c. The definition of "processing facility" has been expanded to include "meat, poultry, and any other variety of food processing operations." Processing facility continues to mean an establishment that prepares, treats, or converts tangible personal property into finished goods or another form of tangible personal property. The term includes a business engaged in processing agricultural, aquacultural, or maricultural products and specifically includes meat, poultry, and any other variety of food processing operations. It does not include an establishment in which retail sales of tangible personal property are made to retail customers. Code Section 12-6-3360(M)(6).
4. Special provisions have been deleted that qualify certain areas and counties for an increased credit designation. The restriction that a county's designation cannot be lowered in credit amount more than one tier in the following calendar year has also been deleted. Previously, rankings were done with equal weight given to unemployment rate and per capita income and then adjusted in accordance with special rules in Code Sections 12-6-3360(B) and (L), as applicable. Code Section 12-6-3360(B) and former Code Section 12-6-3360(L).

5. Section 38 of the Act repealed Code Section 12-6-3450 concerning a tax credit for persons terminated as a result of closing or realignment of federal military installations. Code Section 12-6-3450(A)(1)(b) was referenced in Code Section 12-6-3360(F)(2)(d) and Code Section 12-6-3360(M)(3). The general definition of “new job” in Code Section 12-6-3360(M)(3) continues to provide that “this exclusion of a new job created by an employee shifting does not extend to a job created at a new or expanded facility located in a county in which is located an ‘applicable federal facility’ as defined in Section 12-6-3450(A)(1)(b).”

Effective Date: January 1, 2011, except the repeal of Code Section 12-6-3450 is effective June 23, 2010.

House Bill 4478, Section 17 (Act No. 290)

**Port Cargo Volume Increase Credit - Amended**

Code Section 12-6-3375 provides a tax credit to a taxpayer engaged in manufacturing, warehousing, or distribution that uses a South Carolina port facility and that increases its port cargo volume at these facilities by at least 5% in a calendar year over its base year port cargo volume. The amount of the credit is determined by the Coordinating Council for Economic Development (“Council”) upon application by the taxpayer. The changes to the credit include:

1. The credit has been expanded to allow it to be used against employee withholding taxes. The total amount of credit available for all taxpayers continues to be \$8 million a calendar year. Only \$4 million of the \$8 million may be used against withholding. Previously, the credit could only be used against income taxes.
2. The time for the taxpayer to submit an application to the Council for certification of the credit amount has changed. The taxpayer may now submit the application after the calendar year in which the increase occurs. Prior to amendment, a taxpayer had to submit the application by March 1<sup>st</sup> of the calendar year following the year of the increase.
3. The Council continues to have the sole discretion in allocating the credit and may now make allocations on a monthly, quarterly, or yearly basis. Previously, credits were allocated on a yearly basis.
4. The provisions in subitems (A)(2) and (B)(2) that provided that a taxpayer could not receive more than \$1 million in credit a year unless the total \$8 million credit had not been allocated have been deleted.
5. The Council may annually award up to \$1 million in credit to a new warehouse or distribution facility which commits to spending at least \$40 million at a single site and creating 100 new full-time jobs, without regard to base year cargo requirements.

The Council can award the credit in the year the facility is announced, but cannot tender the credit certificate until the taxpayer has provided proof that the capital investment and job requirements have been, or will be, satisfied. Any credit certificate expires 3 years after issuance if satisfactory proof has not been received.

Effective Date: January 1, 2011

House Bill 4478, Section 22 (Act No. 290)

**Alternative Fuels Research and Development Credit - Extended to Waste Grease Derived Biodiesel**

Code Section 12-6-3631, providing an income tax credit for qualified expenditures a taxpayer incurs for research and development of certain alternative energy sources, has been amended to include certain expenditures to develop feedstocks and processes for waste grease derived biodiesel in the definition of “qualified expenditures for research and development.” The amendment also provides that the credit for research and development for waste grease derived biodiesel is 10% of the qualified expenditures.

Effective Date: January 1, 2011

House Bill 4478, Section 19 (Act No. 290)

**Job Development Credit Amended**

Code Section 12-10-80 provides a credit against employee withholding taxes to new or expanding businesses making qualifying investments and creating a minimum number of new jobs in South Carolina and entering into a revitalization agreement with the Coordinating Council for Economic Development (“Council”). Code Section 12-10-80 has been amended as follows:

1. A provision has been added to provide that a company’s job development credits are suspended during any quarter the company fails to maintain 100% of the minimum job requirement set forth in the revitalization agreement. A company can only claim credits on jobs, including a range of jobs approved by the Council, as set forth in the company’s final revitalization agreement. This codifies an existing guideline of the Council. Code Section 12-10-80(A)(6).
2. A provision has been added to clarify that credits may be claimed beginning with the withholding quarter after the Council’s approval of the company’s documentation that the minimum job and capital investment requirements have been met. This codifies an existing guideline of the Council. Code Section 12-10-80(A)(7).

3. Subsection (C)(3), which provides for the eligible expenditures that can be reimbursed from job development credits has been amended: (a) to clarify that real property acquired by capital or operating lease with at least a 5 year term, may qualify as an eligible expenditures if approved by the Council and (b) to provide only employee relocation expenses for those employees to whom the company is paying gross wages of at least twice the lower of the per capita income of the state or the county in which the project is located, qualify as eligible expenditures.

Effective Date: January 1, 2011

House Bill 4478, Section 18 (Act No. 290)

**Credit against License Fee on Utilities and Electric Cooperatives for Eligible Infrastructure Projects - Amended**

Code Section 12-20-105, which provides a credit for amounts paid in cash for qualifying infrastructure for an eligible project against the license fee imposed on utilities and electric cooperatives in Code Section 12-20-100, has been amended as follows:

1. Subsection (B)(2), which formerly allowed an office, business, commercial, or industrial park or combination of these parks to be considered an eligible project for purposes of the credit, has been amended to allow a project located in an office, business, commercial, or industrial park or combination of these parks to be considered an eligible project. The amendment also expands who can own or construct a project to include agencies of the State.
2. Subsection (C)(4) has been amended to allow incubator buildings owned by the county, political subdivision, or agency of the State to qualify as eligible infrastructure.
3. Section (H) was added to provided that by March 1 of each year the Department will issue a report to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Secretary of the Department of Commerce outlining the history of the credit including the amount of credit allowed and the types of infrastructure provided to eligible projects.

Effective Date: January 1, 2011

**The following provision was enacted in 2006, but is effective for tax years beginning after 2010. It is summarized below for informational purposes.**

Senate Bill 91, Sections 50 through 55 (Act No. 110)

(See also House Bill 3749, Sections 55 through 60 (Act No. 116))

**Single Factor Apportionment - Related Amendments Effective Upon Final Phase In of Single Sales Factor Apportionment Method**

Effective for tax years beginning after 2006, Act No. 384 of 2006 amended Code Section 12-6-2250 to enact a single factor apportionment factor for businesses dealing in tangible personal property using the 3 factor (with double weighted sales) apportionment method. The single factor apportionment factor is being phased in and will replace the 3 factor (with double weighted sales) apportionment method for tax years beginning in 2011.

The following amendments, effective for tax years beginning after 2010, update cross references from Code Section 12-6-2250 (the 3 factor apportionment method with double weighted sales and phase in provisions of the single sales factor) to Code Section 12-6-2252 (the single sales factor apportionment method) for the following code sections:

1. Code Section 12-6-1130(6) dealing with computation of the depletion deduction;
2. Code Section 12-6-2240 dealing with apportionment of income; and
3. Code Section 12-6-2290 dealing with gross receipts factor.

The following code sections will be repealed once the single sales factor is fully phased in effective for tax years beginning after 2010:

1. Code Section 12-6-2250 (the 3 factor apportionment method with double weighted sales and phase in provisions of the single sales factor);
2. Code Section 12-6-2260 (3 factor apportionment method property factor definition); and
3. Code Section 12-6-2270 (3 factor apportionment method payroll factor definition).

Effective Date: Tax years beginning after 2010.

# **PROPERTY TAXES and FEES IN LIEU OF PROPERTY TAXES**

House Bill 3713, Section 1 (Act No. 57)

## **Valuation of 6% Real Property When an Assessable Transfer of Interest Occurs**

Background. The South Carolina Real Property Valuation Reform Act, Article 25, Chapter 37, Title 12 was enacted in 2006. Code Section 12-37-3140 of the Act provides for valuation of real property at fair market value as of December 31<sup>st</sup> of the year in which an assessable transfer of interest (ATI) has occurred. This new valuation becomes the basis for property tax assessment in the property tax year following the year in which the ATI occurred. During that property tax year, the new valuation is not subject to the 15% cap imposed on valuation increases attributable to the periodic countywide appraisal and equalization program implemented pursuant to Code Section 12-43-217.

New Law. Code Section 12-37-3135 has been enacted to exempt a portion of the value of certain property that undergoes an ATI after 2010. If eligibility requirements are met, the alternate valuation derived using the exemption will become the basis for property tax assessment.

Eligibility Requirements - Assessment Ratio and Notice. When property subject to the 6% assessment ratio provided pursuant to Code Section 12-43-220(e) and which is currently subject to property tax undergoes an ATI after 2010, such property may be eligible for the exemption. The property owner or his agent must notify the assessor that the property will be subject to the 6% assessment ratio before January 31<sup>st</sup> of the property tax year for which the owner first claims eligibility. No further notifications are necessary from the current owner while the property remains subject to the 6% assessment ratio.

Eligibility Requirement - ATI Valuation. Even if the assessment ratio and notice requirements are met, the exemption and alternate valuation allowed under Code Section 12-37-3135 will not apply if the “ATI fair market value” of the parcel is less than “current fair market value.” (See definitions below.) If the ATI fair market value is less than current fair market value, valuation will be determined as provided in Code Section 12-37-3140.



Definitions. Definitions are provided for the following terms used in Code Section 12-37-3135.

- “ATI fair market value” means the fair market value of a parcel of real property and any improvements thereon as determined by appraisal at the time the parcel last underwent an assessable transfer of interest.
- “Current fair market value” means the fair market value of a parcel of real property as reflected on the books of the property tax assessor for the current property tax year.
- “Exemption value” means the ATI fair market value when reduced by the exemption allowed by this section.
- “Fair market value” means the fair market value of a parcel of real property and any improvements thereon as determined by the property tax assessor by an initial appraisal, by an appraisal at the time the parcel undergoes an assessable transfer of interest, and as periodically reappraised in a countywide reassessment program pursuant to Code Section 12-43-217.
- “Property tax value” means the fair market value as it may be adjusted downward to reflect the limit, imposed pursuant to Code Section 12-37-3140(B), on increases in value resulting from a periodic reappraisal pursuant to Code Section 12-43-217.

Applicability of the Exemption. If all eligibility requirements are met, a parcel of real property undergoing an ATI after 2010 will be subject to an exemption equal to 25% of ATI fair market value. The resulting exemption value must not be less than current fair market value. Calculation of property tax value for such parcels is based on exemption value. The exemption allowed by this section applies at the time the ATI fair market value first applies.

Effective Date: Applies to assessable transfers of interest after 2010.

House Bill 3713, Section 2.A (Act No. 57)

### **Millage Increase Limit – Revised**

Code Section 6-1-320(A) authorizes a local governing body, in years in which no reassessment program is implemented, to increase the millage it imposes for general operating purposes only to the extent of the increase in the average consumer price index for the most recent 12 month period and the percentage increase in the previous year in the local entity’s population. Code Section 6-1-320(A) has been amended to authorize the local governing body to further increase its operating millage by any such increase

allowed but not previously imposed for the three property tax years preceding the year to which the current limit applies.

Effective Date: June 14, 2011

House Bill 3713, Sections 3.A and C (Act No. 57)

**Rollback Millage Calculation - Revised**

Code Section 12-37-251(E) provides a formula for calculating rollback millage. Rollback millage is the millage imposed in the year a county implements a reassessment program, as provided in Code Sections 6-1-320 and 12-43-217. The rollback millage formula consists of a numerator and a denominator. Code Section 12-37-251(E) has been amended to provide the following:

1. The numerator is the amount of property taxes levied in the prior year as adjusted by abatements and additions. Previously, the numerator was an amount equivalent to the prior year property tax revenues.
2. With respect to the denominator, which is derived from the total assessed value applicable in the reassessment year adjusted by certain deductions, there is a new deduction for assessments attributable to increases in value due to an assessable transfer of interest (ATI).

Effective Date: June 14, 2011

House Bill 3713, Section 2.B (Act No. 57)

**Millage Increase Limit and Special Tax Districts - Clarified**

Code Section 6-1-320, which limits increases in millage imposed for general operating purposes, has been amended. New subsection (F) clarifies that the restrictions contained in Code Section 6-1-320 do not apply to millage imposed to pay bonded indebtedness or operating expenses of a special tax district established pursuant to Code Section 4-9-30(5), but the special tax district is subject to the millage rate limitations set forth in Code Section 4-9-30(5).

Effective Date: June 14, 2011

House Bill 3713, Sections 3.B and C (Act No. 57)

**Uniform Millage Imposition for Municipalities Extending into Multiple Counties that Implement Reassessment Programs in Different Years**

Code Section 12-37-251, which provides a formula for calculating rollback millage, has been amended. New subsection (G) applies to a municipality with boundaries extending into multiple counties that implement reassessment programs in different years. Such a municipality's governing body must set an equivalent millage to be used to compute municipal property taxes. This equivalent millage must be determined by methodology established by the respective county auditors which must be consistent with the methodology for calculating equivalent millage to be established by the Department for use in these situations for the purpose of equalizing the municipal property tax on real property situated in different counties.

Effective Date: June 14, 2011

Senate Bill 628 (Act No. Unassigned)

**Dorchester County School Districts Millage and Cash Reserves**

For the school year 1992-1993 and for all school years thereafter, the annual millage for the operating budgets for Dorchester School Districts 2 and 4 must not, without the approval of the Dorchester County Council, be increased beyond the millage cap imposed by Section 6-1-320 for the reasons stated in that section notwithstanding the supermajority vote requirement contained therein, plus a limited cash reserve.

Pursuant to Senate Bill 628, the cash reserve may not exceed 15% of the total operating budget for that school district for the year in which the cash reserve is maintained and must be funded only by an accumulation of revenue in excess of budgeted amounts and not by the levy of additional taxes as part of the budget. Monies in the cash reserve may not be used to fund any expenditure for which any general obligation bond may be issued.

This provision amends Act 593 of 1992, which in turn, amended Act 267 of 1987, both of which originally imposed limits on the millage imposed by these school districts. Act 593 originally allowed a 5% cash reserve for these school districts.

Effective Date: March 16, 2011

**Index of Taxpaying Ability – Imputed Value for Owner-Occupied Residential Property**

The index of taxpaying ability is used to determine state funding for education under the Education Finance Act of 1977, Chapter 20, Title 59. This index, prepared by the Department, shows a local school district’s relative fiscal capacity in relation to that of all other districts in the state based on the full market value of all taxable property of the district assessed for ad valorem taxes for the second completed property tax year preceding the fiscal year in which the index is used.

For property tax years beginning after 2006, Code Section 12-37-220(B)(47) exempts 100% of the fair market value of owner-occupied residential property receiving a 4% assessment ratio from all property taxes imposed for school operating purposes. School districts are reimbursed for lost revenue based on a 3 tier formula set forth in Code Section 11-11-156.

This temporary proviso clarifies that, for fiscal year 2011-2012, an index value for the exempt owner-occupied residential property must be imputed by adding the second preceding taxable year total school district reimbursements for Tiers 1, 2 and 3(A) of the 3 tier formula and not to include the supplement distribution. The Department shall not include sales ratio data in its calculation of the index of taxpaying ability. The methodology for the calculation of value for classes of property other than exempt owner-occupied residential property is not affected by this temporary proviso.

Effective Date: This temporary proviso is effective for State fiscal year July 1, 2011 through June 30, 2012. It will expire June 30, 2012, unless reenacted by the General Assembly in the next legislative session.

House Bill 3806 (Act No. Unassigned)

**Property Tax Credit – Lexington County School Districts 1 and 4**

This joint resolution provides a credit for property tax millage imposed in 2007 and 2008 on owner-occupied residential property in Lexington County School District Numbers 1 and 4 to repay construction lease-purchase obligations (the debt service millage). Code Section 12-37-220(B)(47) exempts 100% of the fair market value of owner-occupied residential property receiving a 4% assessment ratio from all property taxes imposed for school operating purposes. In July 2009, the South Carolina Supreme Court clarified that the debt service millage was millage imposed for a school operating purpose and thus subject to the exemption. See *Berkeley County School District v South Carolina Department of Revenue* 383 S.C. 334, 679 S.E. 2d 913 (2009).

The joint resolution specifies the method by which the debt service millage is to be calculated and applied as a credit against property taxes on affected parcels for tax year 2011. The credit is the sole remedy with respect to property taxes attributable to the debt service millage. The credit is refundable to the extent it exceeds actual property tax liability for tax year 2011. Ownership of affected parcels is determined as of July 1, 2011.

Effective Date: April 12, 2011

## **REMINDER**

**The following provisions were enacted in 2010, but are effective in 2011. They are summarized below for informational purposes.**

House Bill 4478, Section 13 (Act No. 290)

### **Manufacturers' Real Property Used for Warehousing and Wholesale Distribution - Changes to Requirements for Alternative Classification**

Code Section 12-43-220(a) concerns the classification of real and personal property owned by, or leased to, manufacturers and utilities and generally provides for an assessment ratio of 10.5% on property used in the conduct of the business. Item (4) has been amended to provide that real property owned by or leased to a manufacturer and used primarily for warehousing and wholesale distribution is not considered used in the conduct of the manufacturing business. Previously, this exception was available only for property used exclusively for warehousing and wholesale distribution. Real property that falls outside the manufacturers and utilities classification is generally taxed based on a 6% assessment ratio.

The amendment further clarifies that real property subject to this exclusion must not be physically attached to the manufacturing plant unless the warehousing and wholesale distribution area is separated by a permanent wall.

Effective Date: January 1, 2011

House Bill 4478, Sections 2 - 5 (Act No. 290)

### **Little Fee - Revised for Time Limits, Valuation, and Qualifications**

1. Code Section 4-12-30(B)(4)(b) has been amended to provide that if a project consists of a manufacturing, research and development, corporate office, or distribution facility, each sponsor or sponsor affiliate is not required to invest \$2.5 million, if the total investment in the project exceeds \$5 million. Previously, the total investment had to exceed \$10 million.

Effective Date: Agreements executed after January 1, 2011. However, a taxpayer and a county may amend an existing agreement at any time prior to the expiration of the fee to incorporate this change into the agreement.

2. Code Section 4-12-30(C)(4) has been amended to provide that a single piece of property may be subject to the fee for no more than 30 years. Previously, the statute provided that a single piece of property could be subject to the fee for up to 20 years. By resolution on a finding of substantial public benefit, the county may agree to

extend this period for another 10 years. Corresponding amendments provide that if a county allows the additional 10 year extension, a single piece of property can be subject to the fee for up to 40 years, and the project itself can be subject to the fee for up to 50 years. For the super fee, a single piece of property can be subject to the fee for up to 40 years (with the extension) and the project itself can be subject to the fee for up to 53 or 55 years depending on the specifics of the project. Previously, the super fee time limits were 30 years and 43 or 45 years, respectively.

Effective Date: Effective for agreements executed after January 1, 2011. However, a taxpayer and a county may amend an existing agreement at any time prior to the expiration of the fee to incorporate this change into the existing agreement.

3. Code Section 4-12-30(D)(2)(a)(i), which provides that real property is generally valued at original cost for the life of the fee, has been amended to provide that a county and a sponsor or sponsor affiliate may agree (initially or by amendment) that the value of real property subject to the fee will be determined by an appraisal completed by the Department. If the county and the sponsor or sponsor affiliate agree to appraisal by the Department, the property will be subject to reappraisal no more than once every 5 years.

Effective Date: Effective in each county in the first property tax year in which a county reassessment program is implemented after December 31, 2010.

4. Code Section 4-12-30(J)(1)(b) has been amended to provide that property that has been subject to South Carolina property taxes is eligible for the fee if it was placed in service in the State pursuant to an inducement agreement or other preliminary county approval before the execution of a lease agreement. Before this amendment, previously taxed property would qualify only if it had not been placed in service.

Effective Date: January 1, 2011

House Bill 4478, Section 6 (Act No. 290)

(See also Senate Bill 1131 (Act No. 161))

### **Big Fee - Extended Time Periods and Valuation**

1. Code Section 4-29-67(C)(3) has been amended to provide that a single piece of property may be subject to the fee for no more than 30 years. Previously, the statute provided that a single piece of property could be subject to the fee for up to 20 years. By resolution on a finding of substantial public benefit, the county can agree to extend this period for another 10 years. Corresponding amendments provide that if a county allows the additional 10 year extension provided for in the statute, a single piece of property can be subject to the fee for up to 40 years, and the project itself can be subject to the fee for up to 50 years. For the super fee, a single piece of property

can be subject to the fee for up to 40 years (with the extension) and the project itself can be subject to the fee for up to 53 or 55 years depending on the specifics of the project. Previously, the super fee time limits were 30 years and 43 or 45 years, respectively.

Effective Date: January 1, 2011. However, a county may amend an existing agreement at any time prior to the expiration of the fee to incorporate this change into the agreement.

2. Code Section 4-29-67(D)(2)(a)(iii)(A) which provides that real property is generally valued at original cost for the life of the fee, has been amended to provide that a county and a sponsor or sponsor affiliate may agree (initially or by amendment) that the value of real property subject to the fee will be determined by an appraisal completed by the Department. If the county and the sponsor or sponsor affiliate agree to appraisal by the Department, the property will be subject to reappraisal no more than once every 5 years.

Effective Date: Effective in each county in the first property tax year in which a county reassessment program is implemented after December 31, 2010.

House Bill 4478, Sections 8 - 12 (Act No. 290)  
(See also Senate Bill 1131, Sections 1 - 2 (Act No. 161))

### **Simplified Fee - Extended Time Period, Valuation and Qualification**

1. Code Section 12-44-30(21) has been amended to provide that the “termination date” is the last day of the property tax year that is the 29<sup>th</sup> year following the first property tax year in which an applicable piece of economic development property is placed in service. By resolution or a finding of substantial public benefit, the county may agree to extend this period for another 10 years. Previously, the termination date was the 19<sup>th</sup> year after the economic development property is placed in service or the 29<sup>th</sup> year for property subject to an enhanced investment fee, and a single piece of property could be subject to the fee for a total of 30 years.

Effective Date: January 1, 2011. However, a county and a sponsor may amend an existing fee agreement any time before the expiration of the fee to incorporate this change.

2. Section 12-44-50(A)(1)(c)(i) which provides that real property is generally valued at original cost for the life of the fee, has been amended to provide that a county and a sponsor or sponsor affiliate may agree (either initially or by amendment) that real property subject to the fee will be determined by an appraisal completed by the Department. If the county and the sponsor or sponsor affiliate agree to appraisal by the Department, the property will be subject to reappraisal no more than once every 5 years.



Effective Date: Effective in each county in the first property tax year in which a countywide reassessment program is implemented after December 31, 2010.

3. Code Section 12-44-110(2) has been amended to provide that property that has been subject to South Carolina property taxes, is eligible for the fee if it was placed in service in the State pursuant to an inducement agreement or other preliminary county approval before the execution of a lease agreement. Before this amendment, previously taxed property would qualify only if it had not been placed in service.

Effective Date: January 1, 2011

House Bill 4478, Section 7 (Act No. 290)

### **Special Source Revenue Bonds or Credits - Eligible Uses Expanded**

Code Section 4-29-68 allows a county to issue special source revenue bonds to pay for, among other things, improved or unimproved real property associated with a manufacturing or commercial project. Code Section 4-29-68(A)(2) has been amended to provide that bonds may be issued, or a credit against the fee may be given, to pay for the cost of personal property including machinery and equipment used in the operation of such a project.

If the bonds, or monies from a credit allowed against the fee due on the property, are used to pay for personal property, and the personal property is removed from the project during the time the fee is in effect and the removed property is not replaced with qualifying replacement property, the amount of the fee due for that property must be paid for the year it is removed and for the 2 years following its removal from the project. If any bond funds or credit funds are used to pay for both real and personal property, or infrastructure and personal property, all of the funds will be presumed to have first been used to pay for personal property. The fee amounts described above will be remitted to the county in which the project is located.

Effective Date: January 1, 2011

# SALES AND USE TAXES

Senate Bill 36, Section 1 (Act No. 32)

## **Durable Medical Equipment - Phase Out of Sales and Use Tax**

History of Exemption. Code Section 12-36-2120(74) was added by Act No. 99 of 2007 to exempt from sales and use tax durable medical equipment and related supplies as defined under federal and state Medicaid and Medicare laws that met the following conditions:

1. The purchase must be paid directly by funds of South Carolina or the United States under the Medicaid or Medicare programs
2. State or federal law or regulation authorizing the payment must prohibit the payment of the sales or use tax and
3. The durable medical equipment and related supplies must be sold by a provider who holds a South Carolina retail sales license and whose principal place of business is located in South Carolina.

In addition, the 2007 legislation contained an uncodified provision providing for a phase-in of the exemption. For sales on or after July 1, 2007, the rate of tax was 5.5%. Reductions of the tax rate would be made if the Board of Economic Advisors forecast showed an annual general fund growth rate of at least 5% for the next fiscal year. Since the annual growth condition was not met, the sales tax rate on durable medical equipment and related supplies remained at 5.5%.

New Law. Act No. 32 of 2011 provides for a new phased-out sales and use tax rate on the sale of durable medical equipment and related supplies meeting the above requirements. The rate imposed on the gross proceeds of sales for durable medical equipment and related supplies are as follows:

- For sales occurring from July 1, 2011 to June 30, 2012. The sales and use tax rate is 3.5 % (plus any applicable local sales and use tax).
- For sales occurring from July 1, 2012 to December 31, 2012. The sales and use tax rate is 1.75% (plus any applicable local sales and use tax).
- For sales occurring on or after January 1, 2013. There is no state or local sales and use tax. The exemption under Code Section 12-36-2120(74) is fully implemented.

In addition, this amendment repealed the requirement of the 5% annual general fund growth rate contained in Act No. 99 of 2007.

Effective Date: June 8, 2011

Senate Bill 36, Section 2 (Act No. 32)

**Warranty, Service and Maintenance Contracts - Amended**

Act No. 32 amends the application of the sales and use tax to warranty or maintenance contracts effective September 1, 2011. The changes that are effective September 1, 2011, amend the sales and use tax law so that the application of the tax to warranty or maintenance contracts, and to the withdrawals of parts to fix a defective product under these contracts, will be the same as it was prior to October 1, 2005. See SC Revenue Ruling #93-6 and SC Revenue Ruling #03-5, Questions #19 through #22, for an explanation of the application of the tax to a warranty or maintenance contract prior to October 1, 2005 as well as on and after September 1, 2011.

The statute continues to tax the sale of a warranty or maintenance contract purchased at the same time the tangible personal property is purchased, unless the sale of the tangible personal property is exempt from the tax. However, with limited exceptions, the sales and use tax will no longer apply to a warranty or maintenance contract purchased after the tangible personal property is purchased.

Effective Date: September 1, 2011

Senate Bill 36, Sections 3 and 4 (Act No. 32)

**Nexus – Distribution Facility**

Distribution Facility Requirements. Code Section 12-36-2691 has been added to provide that, subject to the requirements discussed below, owning, leasing, or utilizing a distribution facility in South Carolina, including a distribution facility of a third party or an affiliate, is not considered in determining whether the person has a physical presence in South Carolina sufficient to establish nexus with South Carolina for sales and use tax purposes.

A “distribution facility” is “an establishment where shipments of tangible personal property are stored and processed for delivery to customers and no retail sales of the property are made.” The provisions of Code Section 12-6-3360(M)(8), the job tax credit statute definition of “distribution facility” that allows for limited retail sales, is inapplicable to this definition. An “affiliate” is “a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person.” For this purpose, a person controls another person if that person holds a 50% ownership interest in the other person.

Code Section 12-36-2691(C) provides that this section applies only if the person or its affiliate:

1. places a distribution facility in service after December 31, 2010, and before January 1, 2013,
2. makes, or causes to be made through a third party, a capital investment of at least \$125 million after December 31, 2010, and before December 31, 2013 and,
3. creates at least 2,000 full-time jobs with a comprehensive health plan for those employees after December 31, 2010, and before December 31, 2013. “Full-time” and “new job” have the same meaning as provided in Code Section 12-6-3360 for purposes of this item.

After meeting the above requirement for creating 2,000 full-time jobs with a comprehensive health plan for those employees, the person, or its affiliate, must maintain at least 1,500 full-time jobs with a comprehensive health plan for those employees until January 1, 2016 for Code Section 12-36-2691 to remain applicable.

Code Section 12-6-2691(D) provides that this section no longer applies on the earlier of:

1. January 1, 2016,
2. when the person fails to meet the requirements of Code Section 12-36-2961(C) listed above, or
3. the effective date of any law enacted by the United States Congress that allows a state to require that its sales tax be collected and remitted even if the taxpayer does not have substantial nexus with that state.

Email Notification to Purchasers - Use Tax. Code Section 12-36-2691(E) provides that a person to whom this section applies who makes a sale through the person's Internet website shall notify a purchaser in a confirmation email that the purchaser may owe South Carolina use tax on the total sales price of the transaction and include in the email an Internet link to the Department's website that allows the purchaser to pay the use tax. The notice must include language that is substantially similar to the following:

YOU MAY OWE SOUTH CAROLINA USE TAX ON THIS PURCHASE BASED ON THE TOTAL SALES PRICE OF THE PURCHASE. YOU MAY VISIT [WWW.SCTAX.ORG](http://WWW.SCTAX.ORG) TO PAY THE USE TAX OR YOU MAY REPORT AND PAY THE TAX ON YOUR SOUTH CAROLINA INCOME TAX FORM.

Department's Use Tax Webpage. The Department is required to provide the means that allows a person to whom this section applies to link to the Department's website and that allows the purchaser to pay any required tax through the Department webpage. The Department must include on the webpage a table of the various sales tax rates of the State by location that permits the person to calculate the tax based on the total sales price and delivery location.

Retailer's Annual Statement to Purchasers. By February 1<sup>st</sup> of each year, the person to whom Code Section 12-36-2691 applies shall provide to each purchaser to whom tangible personal property was delivered in South Carolina, a statement of the total sales made to the purchaser during the previous calendar year. The statement must contain language substantially similar to the following:

YOU MAY OWE SOUTH CAROLINA USE TAX ON PURCHASES YOU MADE FROM US DURING THE PREVIOUS TAX YEAR. THE AMOUNT OF TAX YOU MAY OWE IS BASED ON THE TOTAL SALES PRICE OF [INSERT TOTAL SALES PRICE] THAT MUST BE REPORTED AND PAID WHEN YOU FILE YOUR SOUTH CAROLINA INCOME TAX RETURN UNLESS YOU HAVE ALREADY PAID THE TAX.

The statement must not contain any other information that would indicate, imply, or identify the class, type, description, or name of the products purchased. Any information that would indicate, imply, or identify the class, type, description, or name of the products purchased is considered strictly confidential. The statement may be provided by first class mail or email.

Retailer's Invoice or Other Documentation Requirements. Code Section 12-36-2692 has been added requiring that each person to whom Code Section 12-36-2691 applies provide to its customers readily visible notification on invoices, or other similar documentation that the customer must pay the South Carolina use tax on the purchase unless the sale of the tangible personal property to the customer is otherwise exempt. The person complies with this notice requirement if it provides a prominent linking notice on invoices or other similar documentation that directs its customers to information regarding the customer's use tax responsibilities. A linking notice complies with the provisions if the notice reads as follows:

See important sales tax information regarding the tax that you may owe directly to your state of residence.

A person required to provide a linking notice must also provide this notification on its Internet website and catalog.

Effective Date: June 8, 2011

# **MISCELLANEOUS**

## **(Summarized by Subject Matter)**

### **ADMINISTRATIVE and PROCEDURAL MATTERS**

House Bill 3700, Part IB, Section 90, Proviso 90.21 (Act No. 73)

#### **Revenue Laws – Interpretations and Report to General Assembly Committee Chairmen**

During the current fiscal year, the Department’s interpretation of South Carolina’s revenue statutes must be based solely on the plain meaning of the statute’s text and the legislative intent giving rise to the enactment of the statute. Terms in tax statutes may not be given broader meaning beyond the meaning of the statute. At least twice during the fiscal year, the Department shall submit a report to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee regarding any discovered ambiguity in the meaning of a revenue statute. The reports must be submitted no later than November 1 and May 1.

Effective Date: This temporary proviso is effective for State fiscal year July 1, 2011 through June 30, 2012. It will expire June 30, 2012, unless reenacted by the General Assembly in the next legislative session.

Senate Bill 20, Sections 8 through 14 (Act No. 69)

#### **Unauthorized Aliens and Private Employer Licenses**

Chapter 8 of Title 41, concerning unauthorized aliens and private employment and Chapter 14 of Title 8, concerning unauthorized aliens and public employment, have been amended. This legislation contains various law enforcement provisions related to unauthorized aliens and requirements for employers to verify the work authorization of all new hires through E-Verify. These provisions are not applicable to the Department and are not discussed in this summary. However, provisions affecting licenses administered by the Department are discussed below.

Under Code Section 41-8-20, all private employers in South Carolina are imputed a South Carolina employment license which permits a private employer to employ a person in the state. A private employer may not employ a person unless the private employer’s South Carolina employment license and any other applicable licenses as defined in Code Section 41-8-10 are in effect and are not suspended or revoked.

A “license,” as defined in Code Section 41-8-10(C), means an agency permit, certificate, approval, registration, charter, or similar form of authorization that is required by law and that is issued by any agency or political subdivision of the state for the purpose of

operating a business in the state. Professional licenses are excluded, but “license” includes employment licenses, articles of organization, articles of incorporation, a certificate of partnership, a partnership registration, a certificate to transact business, or similar forms of authorization issued by the South Carolina Secretary of State, and any transaction privilege tax license.

The imputed employment license and all other licenses meeting the above definition can be suspended or revoked for violation of state law concerning unauthorized aliens and private employment (Chapter 8 of Title 41). This determination is made by the Department of Labor, Licensing and Regulation.

However, under Code Section 41-8-50(J), if the director of the Department of Labor, Licensing and Regulation determines that a private employer’s license must be suspended or revoked for violation of state law concerning unauthorized aliens and private employment (Chapter 8 of Title 41), the director must immediately notify the applicable licensing agency or political subdivision, such as the Department of Revenue, and that agency or political subdivision must suspend or revoke the private employer’s license or licenses.

Code Section 41-8-50(K) states that a license suspension or revocation (1) does not constitute a dissolution, liquidation, or a winding down process; or a transfer, or other taxable event for tax purposes, including, but not limited to, taxes imposed or authorized by Title 12 and (2) does not affect protections against personal liability provided in Title 33.

Code Section 41-8-60 provides that a private employer may seek review of any disciplinary action of the director of the Department of Labor, Licensing and Regulation taken pursuant to Code Section 41-8-50 with the Administrative Law Court, and the action must be brought in accordance with the provisions of Chapter 23, Title 1.

Effective Date: January 1, 2012



## **MISCELLANEOUS TAX LEGISLATIONS**

House Bill 3700, Part IB, Section 90, Proviso 90.23 (Act No. 73)

### **Admissions Tax Rebate – Motorsports Entertainment Complex Facility**

This temporary proviso provides that up to \$114,000 in admissions tax revenue collected annually from all events held at a motorsports entertainment complex facility with at least 60,000 permanent seats must be rebated to the motorsports entertainment complex facility in the current fiscal year to keep a NASCAR race at the facility.

Effective Date: This temporary proviso is effective for State fiscal year July 1, 2011 through June 30, 2012. It will expire June 30, 2012, unless reenacted by the General Assembly in the next legislative session.

## **OTHER ITEMS (Including Local Taxes)**

Senate Bill 584 (Act No. Unassigned)

### **Lexington County School District Sales and Use Tax**

In the 2004 general election, the qualified electors residing in Lexington County approved a referendum imposing a 1% sales and use tax within Lexington County. The tax was originally authorized under Act 378 of 2004, the Lexington County School District Property Tax Relief Act (the Act), and became effective on March 1, 2005. Section 3(A) of the Act provides that the tax is imposed for 7 years, but it may be reimposed or extended by the General Assembly. Senate Bill 584 extends the tax for an additional 7 years beginning March 1, 2012, the day after the original 7 year period expires.

The tax is administered and collected by the Department in the same manner that other sales and use taxes are collected. It is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in Lexington County that are subject to the tax imposed by Chapter 36, Title 12, and the collection and enforcement provisions of Chapter 54, Title 12. The gross proceeds of the sale of unprepared food that may lawfully be purchased with food stamps and items subject to a maximum tax are exempt from this tax.

Effective Date: May 9, 2011

## **REGULATORY LEGISLATION**

### House Bill 3178 (Act No. 66)

#### **Liquor and Wine Tastings – Retail Liquor Stores**

Code Section 61-6-1035, which allows the sampling of wines containing over 16% by volume of alcohol, cordials, and other distilled spirits sold in a retail alcoholic liquor store, has been amended to add the following new conditions:

1. The sample is limited to products from no more than one wholesaler at one time.
2. The tastings must be conducted by a manufacturer or a retailer, or its agent, and must not be conducted by a wholesaler or its agent. Previously, only manufacturers were permitted to conduct tastings.
3. All costs for the tasting must be paid for by the party conducting the tasting, whether a manufacturer or a retailer, or its agent.
4. As with products it offers for sale, the retailer must purchase all product samples used for the tastings it conducts from a licensed wholesaler.
5. A copy of a certificate of liability insurance for the party conducting the tasting must accompany notification to the South Carolina Law Enforcement Division.

Effective Date: June 17, 2011

### House Bill 3295, Sections 1 and 2 (Act No. 67)

#### **Homeowners Associations May Apply for License to Sell Alcoholic Liquor by the Drink**

Code Section 61-6-1820, which provides criteria for applications for a license to sell alcoholic liquor by the drink, has been amended to allow a homeowners association chartered as a nonprofit organization by the Secretary of State to obtain a license.

Code Section 61-6-20, which provides definitions for terms used in Chapter 6 of Title 61, has been amended to add a definition for the term “homeowners association chartered as a nonprofit by the Secretary of State.” Under this definition, the following requirements apply:

1. The organization must have been recognized as a nonprofit by the Secretary of State.

2. The organization's membership must be limited to individuals who own property in the residential community.
3. The organization's affairs must be governed by a board of directors elected by the membership.
4. No member, officer, agent, or employee of the association may be paid a salary or other form of compensation from any of the profit of the sale of alcoholic beverages, except as may be voted on at a meeting of the governing body.
5. Any compensation paid must be reasonable compensation for the services actually performed.
6. The organization must abide by all alcoholic liquor regulations that apply to any nonprofit organization eligible for a license, except that upon dissolution of the "homeowners association chartered as a nonprofit by the Secretary of State," the remaining assets, if any, may be distributed to its members.
7. A license must be issued only for facilities located within the boundaries of the homeowners association.

Effective Date: June 17, 2011

House Bill 3295, Section 4 (Act No. 67)

### **Local Option Permits – Establishments Located at International Airports**

Code Section 61-6-2010, which authorizes Sunday sales of beer, wine and liquor under temporary permits, known as local option permits, in counties and municipalities that approve Sunday sales by referendum, has been amended. Subsection (G) was added to authorize a local option permit if the following requirements are met:

1. The applicant must be a business establishment located within a building on the grounds of an international airport.
2. The applicant must hold a license for possession, sale and consumption of alcoholic liquors by the drink on its licensed premises.
3. A referendum approving local option permits has passed in any county within the territory of the airport district that operates the international airport or in any municipality located within the territory of the district.

Effective Date: June 17, 2011

House Bill 3295, Section 5.B (Act No. 67)

**Temporary License to Sell Alcoholic Liquor by the Drink at Special Functions – Revised**

Code Section 61-6-2000 authorizes the Department to issue a license, on payment of a \$35 fee, allowing a nonprofit organization to sell alcoholic liquor by the drink for a period not exceeding 24 hours at a single function, for which tickets may be sold to nonmembers. This section has been amended as follows:

1. The term “nonprofit organization” is now defined by reference to Code Section 61-6-20, which provides that the term means an organization not open to the general public, but with a limited membership and established for social, benevolent, patriotic, recreational, or fraternal purposes.
2. A provision that allowed the Department to deny an application if it was not submitted at least 15 days before the special function has been omitted.
3. Reference to the penalty provisions for violations of Article 13, Chapter 6, Title 61 has been omitted.
4. The requirement for a criminal records check in Subsection (B) has been revised. The applicant must obtain a criminal records check conducted by the State Law Enforcement Division within 90 days prior to an application and submit it with the application. Failure to comply will result in denial of the application. An exception in the case of a subsequent application has been omitted.
5. The requirement for notification of law enforcement in Subsection (C) has been substantially revised. The applicant must complete the law enforcement notification provision contained in the application form and submit it with the application, thereby informing the Department that either the chief of police, if the event is located within the city limits, or the county sheriff has been notified of the temporary permit application and given an opportunity to object.

Effective Date: July 1, 2011

House Bill 3295, Section 6 (Act No. 67)

**Sunday Beer and Wine Sales and Consumption Authorized in Certain Counties and Municipalities**

Code Section 61-4-630 has been added to authorize certain establishments to sell, possess, and permit the consumption of beer and wine on the premises for a period not to exceed 24 hours on Sunday. To qualify, the establishment must (1) possess a beer and wine permit and (2) be located in a county or municipality that has conducted a favorable

referendum allowing the sale and consumption of alcoholic liquor by the drink on Sunday under Code Section 61-6-2010.

Effective Date: June 17, 2011

House Bill 3295, Section 3 (Act No. 67)

### **Separate Food Service Establishment – New Permit**

Code Section 61-6-2015 has been added to authorize a temporary permit to sell beer and wine for on-premises consumption for a period not to exceed 24 hours without regard to the days or hours of these sales. This permit shall be considered a biennial temporary permit, and may be issued to those holders of a permit to sell beer and wine for off-premises consumption during periods other than Sunday who have within the licensed premises a separate food service establishment serving prepared food for on-premises consumption. The permit to sell beer and wine for on-premises consumption during the 24 hour period shall apply only to this separate food-service establishment. The Department may require such proof of qualifications for the issuance of these permits as it considers necessary. The application fee and permit fee amounts are the same as for a biennial retail beer and wine permit. These permits may be issued only to qualified applicants located in a county or municipality which pursuant to Code Section 61-6-2010 has successfully held a referendum allowing the possession, sale, and consumption of alcoholic liquors by the drink for a period not to exceed 24 hours.

Effective Date: June 17, 2011

House Bill 3295, Section 5.A (Act No. 67)

House Bill 3278 (Act No. Unassigned)

### **Temporary Beer and Wine Permits for Special Events – Revised**

Code Section 61-4-550, which authorizes the Department to issue one-day beer and wine permits running for a period not exceeding 15 days, for a fee of \$10 per day, for locations at fairs and special functions, has been amended to permanently remove a previous requirement that permits be issued to qualified nonprofit organizations only. This previous requirement, added by Act No. 259 of 2010, was temporarily removed by joint resolution in House Bill 3278 of 2011, effective from January 27, 2011 to June 30, 2011. (For a further explanation of House Bill 3278, see SC Information Letter 11-2.)

Additional amendments to Code Section 61-4-550 are:

1. The requirement for a criminal records check in Subsection (B) has been revised. The applicant must obtain a criminal records check conducted by the State Law Enforcement Division within 90 days prior to an application and submit it with the

application. Failure to comply will result in denial of the application. An exception in the case of a subsequent application has been omitted.

2. The requirement for notification of law enforcement in Subsection (C) has been substantially revised. The applicant must complete the law enforcement notification provision contained in the application form and submit it with the application, thereby informing the Department that either the chief of police, if the event is located within the city limits, or the county sheriff has been notified of the temporary permit application and given an opportunity to object.
3. Subsection (D) has been revised to provide that the Department may issue up to 25 temporary permits on a single application if the applicant is also applying for up to 25 temporary licenses to sell alcoholic liquor by the drink under Code Section 61-6-2000. This does not prohibit the applicant from applying for additional special permits within the same 12-month period. Reference to the penalty provisions for violations of Article 1, Chapter 4, Title 61 has been omitted.

Effective Date: July 1, 2011

## **REMINDER**

**The following provisions were enacted in 2010, but are effective in 2011. They are summarized below for informational purposes.**

## **MISCELLANEOUS TAX LEGISLATION**

House Bill 4478, Section 14 (Act No. 290)

### **Rural Infrastructure Funds - Eligible Expenditures Expanded**

Code Section 12-10-85, establishing the Rural Infrastructure Fund to provide funds to local governments for infrastructure and economic development, has been amended to expand the eligible expenditures. Funds can now be used for: (1) site preparation, (2) acquiring or improving real property, and (3) relocation expenses of an employee if the company pays wages to the employee that are at least twice the State average or the county average for the county in which the project is located, whichever is lower.

Effective Date: January 1, 2011

## **OTHER ITEMS (Including Local Taxes)**

### House Bill 4551 (Act No. 135)

#### **911 Communications Systems - New Charge for Prepaid Wireless and Voice over Internet Protocol**

Chapter 47 of Title 23 governs local emergency telephone systems (*i.e.*, 911 systems). It provides, in part, that fees (“911 charges”) may be imposed to fund an emergency telephone system with respect to the public telephone system and commercial mobile radio service. While 911 charges imposed with respect to the public telephone system are paid directly to the local government imposing the 911 charge, 911 charges imposed with respect to commercial mobile radio service are paid to the Department. The Department is required to deposit these 911 charges with the State Treasurer for distribution pursuant to Code Section 23-47-65.

Chapter 47 has been amended to include new provisions that allow 911 charges to be imposed on prepaid wireless telecommunications services and “Voice over Internet Protocol” (“VoIP”).

Prepaid Wireless 911 Charge: Code Section 23-47-68 has been added with respect to the new prepaid wireless 911 charge to provide the following:

1. A prepaid wireless 911 charge is levied on each prepaid wireless retail transaction occurring in South Carolina. This prepaid wireless 911 charge will be an amount equal to the average commercial mobile radio service 911 charge.
2. A prepaid wireless seller must collect the prepaid wireless 911 charge from a prepaid wireless consumer. The amount of the prepaid wireless 911 charge shall be either separately stated on an invoice, receipt, or other similar document that is provided to the prepaid wireless consumer by the prepaid wireless seller or otherwise disclosed to the prepaid wireless consumer.
3. The prepaid wireless retail transaction must be sourced the same as provided in Code Section 12-36-910(B)(5)(b).
4. The prepaid wireless 911 charge is the liability of the prepaid wireless consumer and not the prepaid wireless seller or any prepaid wireless provider. However, the prepaid wireless seller is liable to remit to the Department all prepaid wireless 911 charges that the prepaid wireless seller collects from prepaid wireless consumers.
5. The amount of the prepaid wireless 911 charge collected by a prepaid wireless seller is not includable in the base for measuring any tax, fee, prepaid wireless 911 charge, or other charge that is imposed by this State, any of its political subdivisions, or any intergovernmental agency. The prepaid wireless 911 charge is not considered revenue of the prepaid wireless seller.

6. The Department must establish procedures by which a prepaid wireless seller may document that a sale is not a prepaid wireless retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions under Code Section 12-36-950.
7. The prepaid wireless seller must remit the prepaid wireless 911 charge to the Department on a monthly, quarterly or annual basis; however, the prepaid wireless seller is entitled to retain 3% of the gross prepaid wireless 911 charges remitted to the Department as an administrative fee.

“Voice over Internet Protocol” 911 Charge: Code Section 23-47-67 has been added to impose a “Voice over Internet Protocol” (“VoIP”) 911 charge in an amount identical to the amount of the 911 charge imposed on each local exchange access facility pursuant to Code Sections 23-47-40(A) and 23-47-50(A). VoIP 911 charges are remitted to the local government to which they are sourced.

Prohibition on Other 911 Charges: Code Section 23-47-69 was added to prohibit the State, any of its political subdivisions, or an intergovernmental agency from requiring any service provider to impose, collect, or remit a tax, fee, surcharge, or other charge for 911 funding purposes other than the 911 charges set forth in Chapter 47 of Title 23.

Advisory Committee: Code Section 23-47-65 was amended to change the name of the “CMRS Emergency Telephone Service Advisory Committee” to the “South Carolina 911 Advisory Committee.”

Definitions: Code Section 23-47-10 was amended to add various definitions for terms related to prepaid wireless and VoIP 911 charges.

Effective Date: July 1, 2011, except that the addition of, or amendments to, Code Sections 23-47-55 (not summarized), 23-47-69, and 23-47-70 (not summarized) are effective March 30, 2010.

House Bill 4478, Section 34 (Act No. 290)

### **Redevelopment Authority Fees Extended for 2 Years**

Code Section 12-10-88 provides that federal employers located on a closed or realigned military installation are to remit a portion of their employees’ South Carolina withholding to the redevelopment authority overseeing that facility if the redevelopment authority complies with reporting requirements. These redevelopment fees may be remitted to the redevelopment authority beginning with the date the redevelopment authority first submitted the required information to the Department and for 15 years thereafter or until January 1, 2015, whichever occurs last. This provision has been amended to provide for the collection and remittance of the redevelopment fees for the 15 year period or through January 1, 2017, whichever occurs last.

Effective Date: January 1, 2011



## **LIST OF TEMPORARY PROVISOS**

Temporary provisos are enacted as part of the annual budget bill, 2011 House Bill 3700, Part IB (Act No. 73). They are effective only for the current State fiscal year (July 1, 2011 – June 30, 2012). They expire on June 30<sup>th</sup>, unless reenacted by the General Assembly.

The following is a list of new provisos enacted during this legislative session and a list of provisos that were enacted in prior fiscal years and reenacted during this legislative session. A brief summary of the new provisos can be found in this publication under the applicable subject matter categories. A summary of the reenacted provisos can be found in SC Information Letters #09-14 and #10-9.

### **NEW PROVISOS**

#### **Miscellaneous (Administrative, Miscellaneous Taxes, Other, and Regulatory)**

Proviso 90.21 - Revenue Laws Interpretations and Report to General Assembly  
Committee Chairmen

Proviso 90.23 - Admissions Tax Rebate – Motorsports Entertainment Complex Facility

#### **Property Taxes**

Proviso 1.99 - Index of Taxpaying Ability – Imputed Value for Owner-Occupied  
Residential Property

### **REENACTED PROVISOS**

#### **Income Taxes**

Proviso 1A.16 - Teacher Supplies - Reimbursement Amount Not Taxable

Proviso 81.8 - Penalty and Interest Waiver for Qualified Individuals for 2009 Estimated  
Tax Payments

#### **Property Taxes**

Proviso 89.45 - Personal Property Tax Relief Fund Not Funded

#### **Sales and Use Taxes**

Proviso 89.72 - Viscosupplementation Therapies - Sales and Use Tax Suspended

Proviso 89.67 - Respiratory Syncytial Virus Medicines Exemption – Effective Date

Proviso 89.44 - Private Schools - Use Tax Exemption

## **REENACTED PROVISOS (continued)**

### **Miscellaneous (Administrative, Miscellaneous Taxes, Other, and Regulatory)**

#### Administrative:

- Proviso 72.17 - 2% Reduction on Interest Rate on Tax Refunds
- Proviso 89.116 - Additional 1% Reduction on Interest Rate on Tax Refunds
- Proviso 81.6 - Website Posting of Tax Return Information for Candidates and Gubernatorial Appointees – Voluntary Program

#### Miscellaneous:

- Proviso 81.7 - Admissions Tax Exemption for Payment to Nonprofit Athletic Booster Organizations for Right to Purchase Athletic Event Season Tickets
- Proviso 1.17 - Local Government School Buses - Motor Fuel Tax Exemption
- Proviso 21.16 - Nursing Home Bed Franchise Fees - Suspension